

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
LLOYD'S OF WASHINGTON, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHE Nos. 868 and 869

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

10 These consolidated matters, being the appeals of two \$100 civil
11 penalties for alleged open burning and notice of contaminant source
12 construction violations of respondent's Regulation I, having come on
13 regularly for formal hearing before Board members Chris Smith and Walt
14 Woodward on the 22nd day of September, 1975, at Tacoma, Washington, and
15 appellant Lloyd's of Washington, Inc. being represented by its president,
16 Robert Lloyd, and respondent Puget Sound Air Pollution Control Authority
17 appearing through its attorney, Keith D. McGoffin, and the Board having
18 heard the testimony, examined the exhibits, records and files herein and

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

II.

Section 9.02(c)(2)(iii) of respondent's Regulation I makes it unlawful to cause or allow an outdoor fire for land clearing in an urbanized area without respondent's verification that the area's population does not exceed 2,500 persons per square mile. Section 6.03(a) requires a "Notice of Construction and Application for Approval" to be filed with respondent for construction, installation or establishment of a new air contaminant source, subject to a list of exceptions identified as Exhibit A of Section 5.03; among the listed exceptions (12) is portable equipment used less than 60 days. Section 3.29 authorizes respondent to levy a civil penalty of not more than \$250 for any violation of Regulation I.

III.

On May 21, 1975, at a gravel pit leased by appellant at South 316th and 58th South, Auburn, King County, an inspector on respondent's staff witnessed (a) an outdoor land-clearing fire and (b) a rock crusher being installed. Later the inspector learned from a search of respondent's

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1 records that (a) appellant had made no request of respondent for a
2 population density verification of the urbanized area and that (b)
3 appellant had not filed with respondent a notice of construction for the
4 rock-crusher, which is an air contaminant source.

5 Accordingly, respondent served on appellant Notice of Violation
6 No. 10664, citing Section 9.02 of respondent's Regulation I, and Notice
7 of Violation No. 10665, citing Section 6.03 and, subsequently and in
8 connection therewith, Notices of Civil Penalty Nos. 2054 (relating to
9 Notice of Violation No. 10664) and 2053 (relating to Notice of Violation
10 No. 10665), each in the amount of \$100.00. The penalties are the
11 subjects of these appeals.

12 IV.

13 On February 27, 1975, respondent cited appellant in Notice of
14 Violation No. 10588 for an alleged land-clearing open burning population
15 verification violation but appellant did not receive the notice. No
16 civil penalty was levied in connection with Notice of Violation No. 10588.

17 V.

18 Prior to May 21, 1975, appellant contacted the Auburn Fire Depart-
19 ment for a permit to burn land-clearing debris at the gravel pit. The
20 department's marshal inspected the debris pile and approved it for
21 burning, subject to a check with respondent to determine if the proposed
22 fire would be consistent with respondent's regulations. The marshal
23 volunteered to make this check with respondent. The marshal directed
24 appellant not to ignite the debris pile until the marshal checked with
25 respondent. Appellant obeyed the marshal's order. The marshal made
26 telephone contact with respondent, failed to ask any questions about the
27 need for a population density verification and got the impression that

FINDINGS OF FACT,

CONCLUSIONS OF LAW A

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1 the proposed fire was proper to ignite. The marshal informed appellant
2 it was all right to ignite the pile. Believing that he had approval
3 from both the Auburn Fire Department and respondent, appellant ignited
4 the pile

5 VI.

6 Prior to May 21, 1975, appellant made a verbal contract with Stoer
7 Construction Co. of North Bend to set up a portable rock crusher at the
8 gravel pit for the purpose of crushing 15,000 cubic yards of gravel.
9 Stoen did this and it was Stoen's portable crusher which was observed
10 by respondent's inspector on May 21, 1975. It took about 30 days for
11 Stoen to crush 15,000 cubic yards of gravel, immediately after which the
12 portable crusher was removed from the gravel pit. The crusher was used
13 at the gravel pit for less than 60 days.

14 VII.

15 Any Conclusion of Law hereinafter cited which is deemed to be a
16 Finding of Fact is adopted herewith as same.

17 From these facts, the Pollution Control Hearings Board comes to these

18 CONCLUSIONS OF LAW

19 I.

20 In good faith, appellant sought a permit for the land-clearing debris
21 fire from an appropriate governmental agency, namely, the local fire
22 department. This was taken to respondent by an official of the fire
23 department. Appellant, under those circumstances, cannot be held for
24 the fire department official's error. Appellant was entitled to rely on
25 the official's statement that neither the local fire department nor
26 respondent had any objection to the fire. To hold otherwise would be
27 saying that a citizen cannot rely on the statement of a responsible

FINDINGS OF FACT,

1 governmental official. Notice of Civil Penalty No. 2054 therefore
2 should be voided.

3 II.

4 The rock crusher, being portable and having been used at the
5 gravel pit for less than 60 days, qualifies as an exempt air contaminant
6 source (Section 5.03 of respondent's Regulation I, Exhibit A (12)).
7 Appellant, therefore, should be exonerated from Notice of Violation
8 No. 10665, Notice of Civil Penalty No. 2053 should be voided.

9 III.

10 Any Finding of Fact herein which is deemed to be a Conclusion of
11 Law is adopted herewith as same.

12 Therefore, the Pollution Control Hearings Board issues this

13 ORDER

14 The appeals are sustained and Notices of Civil Penalties Nos.
15 2054 and 2053 are voided.

16 DONE at Lacey, Washington, this 3rd day of Oct, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

18 Chris Smith
19 CHRIS SMITH, Chairman

20 Walt Woodward
21 WALT WOODWARD, Member

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27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER